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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.240 of 2015 and
M.P.No.1 of 2015

M/s.Bajaj Allianz General Insurance Company Limited,
Plot No.1989, 2nd Floor, H-Block,
12th Main Road, Anna Nagar,
Chennai - 600 040. .. Appellant/2nd respondent

Vs.

1.K.Pappammal
2.Shanthi
3.K.Murali
4.K.Ravi
5.K.Balamurugan
6.B.Bagyam
7.S.Amudha .. Respondents 1 to 7/ Respondents 1 to 7
8.P.V.Nagarajan ..8th Respondent/1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.09.2014 made in M.C.O.P.No.5119 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant	:	Mr.J.Michael Visuvasam
For RR 1 to 7	:	Mr.K.Varadha Kamaraj
		for M.V.Mohanchoudary
R8	:	set exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award dated 09.09.2014 made in M.C.O.P.No.5119 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.The appellant is the second respondent in M.C.O.P.No.5119 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. According to the respondents 1 to



7, on 04.09.2011 at about 20.30 hours, while the deceased was standing on the western side of the Anna Salai, the Innova car belonging to the eighth respondent knocked against him and caused the accident. Due to the accident, the deceased succumbed to death. Hence, the respondents 1 to 7 who are the legal heirs of the deceased filed the above said claim petition, claiming a sum of Rs.7,00,000/- as compensation for the death of E.A.Kumar, against the eighth respondent and appellant/Insurance Company, being the owner and insurer of the car.

3.The appellant/Insurance Company filed counter statement and denied all the averments made by the respondents 1 to 7/claimants. According to the appellant/Insurance Company, the deceased had stepped off the platform unto the road with oncoming traffic thereby putting himself and other users to grave risk, caused the accident. The compensation claimed by the respondents 1 to 7/claimants under different heads are excessive and they are not entitled for the same. The total compensation of Rs.7,00,000/- claimed by the respondents 1 to 7/claimants is extremely high and they are not entitled to any amounts as claimed by them and prayed for dismissal of the claim petition.

4.The eighth respondent/owner of the car remained absent before the Tribunal.

5.Before the Tribunal, the first respondent examined herself as P.W.1 and eye witness K.Balamurugan as P.W.2 and one T.R.Loganathan, who is a customer of the Barber shop belonging to the deceased as P.W.3 and marked 7 documents as Exs.P1 to P7. The appellant-Insurance Company neither examined any witness nor filed any documents.

6.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the eighth respondent and directed the appellant-Insurance Company to pay a sum of Rs.8,19,000/- as compensation to the respondents 1 to 7/claimants.

7.Against the said award dated 09.09.2014 made in M.C.O.P.No.5119 of 2012 granting compensation to the respondents 1 to 7/claimants, the appellant-Insurance Company has come out with the present appeal.

8.The learned counsel appearing for the appellant-Insurance Company contended that the deceased was aged 72 years and was a Barber by profession. The claimants have not produced any material evidence to prove the avocation and income of the deceased. In the absence of material evidence to prove the avocation and income of the deceased, the Tribunal erroneously



fixed a sum of Rs.13,000/- as notional monthly income of the deceased, which is excessive. The amounts awarded by the Tribunal under other heads are excessive and prayed for setting aside the award passed by the Tribunal.

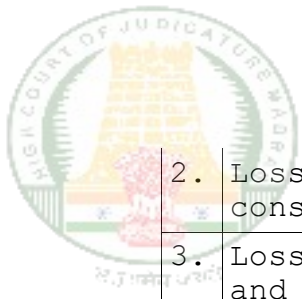
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9. Per contra, the learned counsel appearing for the respondents 1 to 7/claimants contended that the deceased was a Barber and was earning a sum of Rs.15,000/- per month. The Tribunal without accepting the claim made by the claimants, erroneously fixed meager sum of Rs.13,000/- as monthly income of the deceased. The Tribunal after analyzing the entire materials on record, has awarded a sum of Rs.8,19,000/- as compensation to the respondents 1 to 7/claimants, which is just and reasonable. The total compensation awarded by the Tribunal is meager and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant-Insurance Company as well as the respondents 1 to 7/claimants and perused the entire materials on record.

11. From the materials available on record, it is seen that the respondents 1 to 7 contended that the deceased was aged 72 years and was a Barber and was earning a sum of Rs.15,000/- per month. Except oral evidence, the respondents 1 to 7 have not produced any material evidence to prove the avocation and income of the deceased. In the absence of material evidence to prove the avocation and income of the deceased, the Tribunal erroneously fixed a sum of Rs.13,000/- as notional monthly income of the deceased, which is excessive. The accident occurred in the year 2011. Therefore a sum of Rs.9,000/- is fixed by this Court as notional monthly income of the deceased. Thus, the compensation awarded by the Tribunal towards loss of dependency is modified to Rs.4,32,000/- [Rs.9,000/- X 12 X 5 X 4/5]. From the award of the Tribunal it is seen that the Tribunal has awarded a sum of Rs.25,000/- towards funeral expenses and a sum of Rs.50,000/- towards loss of consortium, which are excessive and the same are hereby reduced to Rs.15,000/- and Rs.40,000/- respectively. The compensation awarded by the Tribunal towards loss of love and affection is reasonable and the same is confirmed by this Court. Thus, the compensation awarded by the Tribunal is modified as follows:

Sl .N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of dependency	6,24,000/-	4,32,000/-	Reduced



2.	Loss of consortium	50,000/-	40,000/-	Reduced
3.	Loss of love and affection	1,20,000/-	1,20,000/-	Confirmed
4.	Funeral expenses	25,000/-	15,000/-	Reduced
	Total	Rs.8,19,000/-	Rs.6,07,000/-	reduced by Rs.2,12,000/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,19,050/- is hereby modified to Rs.6,07,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The learned counsel appearing for the appellant-Insurance Company submitted that the appellant-Insurance Company has already deposited the entire award amount to the credit of M.C.O.P.No.5119 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai and the respondents 1 to 7/claimants have withdrawn 50% of the award amount. The respondents 1 to 7/claimants are permitted to withdraw their respective share of the modified award amount now determined by this Court as per the ratio of apportionment fixed by the Tribunal, along with proportionate interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The appellant-Insurance Company is permitted to withdraw the excess amount, if any, lying in the deposit to the credit of M.C.O.P.No.5119 of 2012 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, if the entire amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

krk

To

1.The IV Judge,
Motor Accident Claims Tribunal,
Small Causes Court, Chennai.

Copy to:

The Section Officer, VR Section, High Court, Madras.
+1cc to Mr.M.V.Mohanchoudary , Advocate SR.No. 101013
+1cc to Mr.J.Michael Visuvasam , Advocate SR.No. 100613

C.M.A.No.240 of 2015

A.SK(23/09/2020)